IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision No. 280 of 2007.
Date of Decision: February 19, 2007.

Kala @ Harender

....**Petitioner**

through
Mr. Sunil Panwar, Advocate

Versus

State of Haryana

...**Respondent**

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition is directed against the order dated 7.2.2007 passed by the learned Additional Sessions Judge (Fast Track Court), Gurgaon, whereby an application moved by the petitioner to recall the prosecutrix for further cross-examination, has been turned down.

The aforesaid relief was sought by the petitioner on the ground that the counsel – Shri R.S.Khatana, who had allegedly cross-examined the prosecutrix on 3.2.2007 on behalf of both the accused including the petitioner, was never engaged by him. It was, thus, contended that the petitioner remained unrepresented on 3.2.2007 when the prosecutrix was produced.

It may be noticed here at this stage that earlier the petitioner and his co-accused were acquitted by the learned Additional Sessions Judge

vide his judgment dated 30.7.2004 as the prosecutrix was not examined as a witness by the prosecution. The State of Haryana preferred an appeal and the afore-stated judgment of acquittal was set aside by this Court vide judgment dated 31.7.2006.

The above noticed petitioner's contention has been repelled by the learned trial Court with the following observations:-

> "It may be mentioned that on 3.2.2007 Shri R.S.Khatana Advocate has appeared for both the accused namely Kala and Lala and he has conducted cross-examination in detail on the prosecutrix on that day on behalf of both the accused. It may also be mentioned that on 18.12.2006 in pursuance of copy of the judgment dated 31.7.2006 of Hon'ble High Court this case was taken up. Both the accused had appeared with Shri D.C.Gupta, Advocate on 23.12.2006. Then on 6.1.2007 Shri D.C.Gupta Advocate has appeared for Kala accused while Shri R.S.Khatana, Advocate has appeared for Lala accused. On 20.1.2007 same is the position. Then on 3.2.2007 both the accused are represented by Shri R.S.Khatana, Advocate. The accused are playing hide and seek. Kala accused should have called Shri D.C.Gupta, Advocate or should have told the Court that Shri R.S.Khatana, Advocate is not counsel for him. It may be mentioned that Shri R.S.Khatana, Advocate was specifically asked on 3.2.2007 whether he represents both the accused and whether he is conducting cross-examination on behalf of

both the accused. Learned counsel for the accused submitted that he is conducting cross-examination on behalf of both the accused. Moreover, Shri D.C.Gupta, Advocate could have appeared on 3.2.2007 and could ask the court about the fate of this case but he did not appear in this case on 3.2.2007. Now the present application moved for recalling the prosecutrix is nothing but only malafide one. The accused want to prolong the case or want to put pressure upon the prosecutrix by hook or crook".

Though, learned counsel for the petitioner has referred to an affidavit dated 7.2.2007 purported to have been given by Mr. R.S.Khatana, Advocate, a copy of which has been appended as Annexure P-5, however, the fact remains that the petitioner had earlier engaged Shri D.C.Gupta, Advocate, who appeared on his behalf on 6.1.2007 and 20.1.2007. It can not, thus, be said that the petitioner was unrepresented on 3.2.2007 when the prosecutrix was produced. The inference drawn by learned Additional Sessions Judge that the petitioner has played hide and seek with the Court, thus, warrants no interference.

Dismissed.

February 19, 2007. **(SURYA KANT)**
dinesh **JUDGE**